

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

RESOLUTION of the rights protection procedure no. PT 32/2018, urged by Mr. (...) against the Police Directorate.

Background

1.- On 12/6/2018 it was submitted to the Catalan Data Protection Authority, a letter from Mr. (...) (hereinafter, the person making the claim) for which he made a claim for the alleged neglect of the right of cancellation, which he had exercised previously before the General Directorate of Police (hereinafter, DGP) of the Department of the Interior of the Generalitat of Catalonia. Specifically, the claimant requested that his personal data be deleted from the SIP PF file.

The claimant raised the claim in the following terms: "On May 14, 2018, I was informed by the head of the Information Division Police, from the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia, the resolution (...) referring to the denial of cancellation of personal data of (...) (...) included in the police proceedings that are related in the antecedent de hecho noveno of the aforementioned resolution: "9.

Regarding police proceedings no. (...) /2016, these gave rise to sanctioning file no. (...) /2017. The head of the Administration Service of the Northern Metropolitan Police Region decided to impose a financial penalty on the person concerned. It has subsequently been verified that this file is in a period of constraint, which is why its cancellation does not proceed."

The aforementioned resolution has reference file: AP (...) /18, de su protocolo.

(...)

Since this administrator had not been informed of this incident in advance, he had not taken any action in this regard, so as of today the financial penalty referred to in section 9 of the resolution has been settled, as it is justified in the photocopy that I am allowed to attach, as document number 3.

LICENSE REQUEST:

(...)

That in view of the content of the allegations made in this writing, I have the relevant offices to the end and effect that the unfavorable note that appears in the file system of information of the police of the Generalitat of individuals físicas (SIP PF) managed by the Dirección General de la Policía del Departamento de Interior (Order IRP/435/2009, of October 2) be canceled and may therefore be deleted from the aforementioned file."

The claimant provided various documentation relating to the exercise of this right:

- 1) Copy of the Resolution dated 23/4/2018 issued by the DGP by means of which the right of cancellation that the claimant here had exercised before the DGP was partially estimated.
- 2) Copy of a payment letter dated 5/29/2018 by means of which it was certified that the claimant here had paid a penalty related to file no. (...) /2017.

2.- In accordance with article 117 of Royal Decree (...)0/2007, of December 21, which approves the Regulation for the implementation of Organic Law 15/1999, of December 13, of personal data protection (hereafter, RLOPD and LOPD, respectively), by means of an official dated 6/27/2018 the claim was transferred to the DGP, so that within 15 days formulated the allegations that he considered relevant.

3.- The DGP made allegations in a letter dated 07/13/2018, in which it set out, in summary, the following:

ÿ That: "On 01/15/2018, Mr. (...) submitted a request for the cancellation of personal data."

ÿ That: "On 03/27/2018, a request was issued to the interested person so that, among others, he would certify that he had paid the penalty imposed on him in the file (...) /2017. This sanctioning file derived from the police proceedings (...) /2016 and had been instituted by virtue of what was established in Organic Law 4/2015, of March 10, on the protection of public safety."

ÿ That: "On 04/04/2018 the interested person received the request mentioned in the previous point and we are not aware that he carried out any type of procedure in order to give him an answer."

ÿ That: "On 04/23/2018 the cancellation request of Mr. (...) was resolved. In the resolution of this file, it was agreed to cancel several personal data of this person and the cancellation of those contained in the police proceedings (...) /2016 was refused because the penalty imposed in the sanctioning file that resulted from these proceedings (...) /2017) had not been paid."

ÿ That: "On 05/14/2018, the decision to cancel personal data was notified to the interested person."

ÿ That: "On 31/05/2018, Mr. (...) submitted a request for protection of rights before your Authority. Among the documentation provided by the interested person is documentation certifying that on 05/29/2018 he paid the penalty imposed in the file (...) /2017."

ÿ That: "Consequently with all the above, the denial of the cancellation of the personal data included in the police proceedings (...) /2016 occurred based on the provisions of the LOPD and due to which, at the time the resolution of the data cancellation file was issued, the penalty that had led to the aforementioned proceedings had not been paid nor was it time-barred.

Despite the aforementioned, as a result of the fact that with the documentation provided in the present rights protection procedure, the payment of the penalty imposed in file (...) /2017, on 07/02/2018 has been proven, the ex officio cancellation of the personal data of Mr. (...) related to the proceedings (...) /2016 was agreed. This cancellation was notified to the person concerned on 07/12/2018, as stated on the postal website (...)."

Along with the allegations, the DGP provided the following documentation:

- 1) Copy of the request dated 1/15/2018, registered on the same date before the Generalitat de Catalunya, through which the claimant exercised the right of cancellation before the DGP.
- 2) Office dated 27/3/2018 through which the DGP requires the claimant to amend his application dated 15/1/2018. In particular, he is required to provide "substantiating documentation (original or certified photocopy) in which the payment of the penalties imposed in relation to the aforementioned police proceedings is proven."
- 3) Receipt from the company Correos by means of which the receipt on 4/4/2018 of the letter of amendment dated 3/27/2018 by the claimant is credited.
- 4) Resolution dated 4/23/2018 issued by the DGP by means of which the right of cancellation that the claimant here had exercised before the DGP was partially estimated.
- 5) Office dated 3/5/2018 by means of which the DGP notified the resolution of 23/4/2018 to the claimant as well as proof of receipt of these documents on 14/5/2018.
- 6) Official letter dated 2/7/2018, registered for departure on 9/7/2018, by means of which the DGP communicated to the person claiming the official cancellation of the data related to police proceedings no. (...)/2016.

Fundamentals of Law

1.- The Director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2.- At the time when this resolution is issued, the personal data that were the subject of processing by the DGP and to which the deletion request referred would be subject to Regulation (EU) 2016 / 679 of the European Parliament and the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (RGPD). It is worth saying that in the case we are dealing with, Directive (EU) 2016/680, of the European Parliament and of the Council, of 27/4, would not apply, given that the data referred to by the claimant here do not they would have been treated for the purposes of prevention, investigation, detection or prosecution of criminal offences, but administrative ones. In any case, since the cancellation request that gave rise to the present claim was submitted before the date on which the RGPD would apply, or that the aforementioned Directive could apply, this resolution is issued in accordance with the provisions of the LOPD and RLOPD, as these are the rules applicable at the time when the right of cancellation that is the object of the claim was exercised.

3.- Article 16 of the LOPD, relating to the right of cancellation, determines the following:

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- "1. The person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.
2. The personal data whose treatment does not comply with the provisions of this Law must be rectified or cancelled, where appropriate, and, in particular, when these data are inaccurate or incomplete.
3. The cancellation results in the blocking of the data, and they must only be kept at the disposal of public administrations, judges and courts, for the attention of the possible responsibilities arising from the treatment, during the term of prescription of these responsibilities. Completion of this term, the deletion must proceed.
4. If the rectified or canceled data has been previously communicated, the person in charge of the treatment must notify the person to whom they were communicated of the rectification or cancellation, in the event that the latter maintains the treatment, who must also proceed to cancellation.
5. Personal data must be kept for the periods provided for in the applicable provisions or, where applicable, the contractual relationships between the person or entity responsible for the treatment and the interested party."

For its part, article 31.2 of the RLOPD, provides the following:

"2. Exercising the right of cancellation results in the deletion of data that is inadequate or excessive, without prejudice to the blocking duty in accordance with these Regulations. (...)"

Article 32 of the RLOPD, sections 1 and 2, determines the following:

"1. (...)"

In the cancellation request, the interested party must indicate which data they are referring to, and must provide the documentation that justifies it, if applicable.

2. The person in charge of the file must decide on the request for rectification or cancellation within a maximum period of ten days from the receipt of the request. After the deadline has passed without an express response to the request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.

In the event that it does not have the personal data of the affected person, it must also be communicated within the same period."

On the other hand, article 18 of the LOPD, regarding the protection of the rights of access, rectification, opposition and cancellation, establishes the following in its sections 1 and 2:

"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.

2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable, of the competent body of each autonomous community, which must make sure of the validity or inadmissibility of the refusal."

In line with the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, provides the following:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze, first of all, whether the DGP has resolved and notified, within the period provided for by the applicable regulations, the right of cancellation exercised by the person making the claim. In this regard, it is certified that on 1/15/2018 a letter was entered in the DGP Registry by the person here claiming, through which he exercised his right to cancel his personal data that appeared in the file SIP PF, in relation to various police proceedings linked to administrative offences.

In accordance with articles 16 LOPD and 32 RLOPD, the DGP had to resolve and notify the request for cancellation within a maximum period of ten days from the date of receipt of the request.

In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the request of a party - as is the case - it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, according to the proceedings, the DGP did not respond to the request within the aforementioned 10-day period, since it did not do so until 04/04/2018, when it notified the claiming office of request for amendment of his application, so that the term established by regulation for the purpose was exceeded.

Consequently, the estimate of the claim proceeds in part, from this formal perspective, given that the DGP did not respond in form and time to said request presented by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

5.- Once the above has been established, it is appropriate to analyze the substance of the claim, that is to say, if the response given by the DGP to the request of the now claimant in relation to the

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dismissal of the right exercised, conformed to the precepts transcribed in the foundation of right 3er.

The right of cancellation regulated in the LOPD is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. Through the right of cancellation, the person holding the data can request the deletion of data that is inadequate or excessive, without prejudice to the blocking duty, in the terms provided for in the precepts that regulate the right of cancellation.

Thus, in general, the right of cancellation does not come into play solely in the case of inaccurate, incorrect or erroneous data, but could also be exercised with respect to correct data whose treatment does not conform to the provisions of the LOPD (art. 16.2 LOPD), or in the case of personal data that have ceased to be necessary or relevant for the purpose for which they had been collected or registered (art.

4.5 LOPD and correspondingly article 31.2 of the RLOPD, which establishes that "the exercise of the right of cancellation results in the deletion of data that is inadequate or excessive, without prejudice to the duty to block pursuant to this Regulation).

As noted above, the person making the claim went to this Authority in order to have their data deleted in relation to a penalty that had been imposed on them by the DGP in relation to an administrative offence, a penalty that the claim proved to have paid. Indeed, although the claimant had initially requested the cancellation of several police proceedings for administrative violations, the DGP on 04/23/2018 resolved the request for cancellation by estimating the claim regarding various data, except those relating to a file in which a penalty had been imposed that had not been paid.

The person claiming came to state that before receiving the resolution of the DGP dated 23/4/2018 through which a response was given to his request for cancellation, he was unaware of the existence of the financial penalty that it had been imposed on him by the Administrative Service of the North Metropolitan Police Region, as a result of the initiation and processing of the disciplinary file no. (...)/2017.

But contrary to what the claimant maintains, the DGP has provided the procedure with a copy of an official dated 27/3/2018, by means of which the claimant was required to amend his request for cancellation, and in particular, he was asked to provide "substantiating documentation (original or certified photocopy) attesting to the payment of the penalties imposed in relation to the aforementioned police proceedings." Such request was duly notified on 4/4/2018 to the address provided by the claimant here in his cancellation request dated 1/15/2018.

The DGP has stated that said request was not attended to by the claimant here ("we are not aware that he carried out any type of procedure in order to give him an answer"), which is why, once the deadline granted for compliance has passed to that requirement, the

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DGP dictated the resolution dated 23/4/2018 in the following sense: "1. Cancel the personal data of (...), with DNI no. (...), which are contained in the Generalitat Police Information System file for physical persons (SIP PF) managed by the General Directorate of the Police of the Department of the Interior, and which have been linked to the first de facto precedent of this resolution.

2. Deny the cancellation of the personal data of (...), with ID no. (...) included in the police proceedings that are related in the ninth factual background of this resolution, given that the sanctioning file initiated is in a period of constraint."

The police proceedings referred to in point 2 of the dispositive part of the resolution that has just been transcribed were nos. (...)/2016 that gave rise to sanctioning file no. (...)/2017.

Well, this Authority considers the refusal declared by the DGP to be in accordance with the law given that in accordance with article 4.5 of the LOPD, personal data cannot be canceled until they have ceased to be necessary or relevant for the purpose for which they have been collected or registered, which is considered to have happened in the present case, due to the existence of a financial penalty imposed on the claimant that had not been paid during the voluntary payment period, so that to be the subject of forced execution, by means of constraint.

What's more, it is stated in the actions that the DGP, once it found out - through the claim hearing procedure granted by this Authority - that the person making the claim had paid the financial penalty imposed as a result of sanctioning file no. (...)/2017, canceled the personal data of the claimant here object of police proceedings no. (...)/2016, which was communicated to him by official letter dated 2/7/2018, which the DGP stated in its allegations, to have notified the claimant on 12/7/2018. In this regard, the DGP, in the hearing procedure granted during the processing of this procedure, has not put forward any reason that would justify the need to preserve the data once the claimant here had already paid the fine.

Consequently, and in accordance with what has been explained, the present claim for protection of the right of cancellation should be rejected, given that the DGP, in relation to the data subject to police proceedings no. (...)/2016 and which had given rise to sanctioning file no. (...)/2017, acted in accordance with the regulations on the protection of personal data.

6.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the manager of the file must be required so that in the period of 10 days makes the exercise of the right effective. However, in the present case, even if the claim is partially accepted, for formal reasons, it is not appropriate to request the DGP in this regard, given that the claimed entity would have already notified the resolution to the cancellation request -lation, despite having done it extemporaneously. On the other hand, as announced in the previous legal basis, it is not appropriate to require the DGP regarding the fund, on the one hand because in this

point the rejection of the claim proceeds; and on the other hand, because the DGP has already canceled the disputed data once the claimant here has paid the penalty that was pending payment.

For all that has been exposed,

RESOLVED

First.- Appreciate in part, for formal reasons, and dismiss in substance, the guardianship claim made by Mr. (...) against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Second.- Notify this resolution to the General Directorate of the Police and to the person making the claim.

Third.- Order the publication of the Resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)